

# SENATE BILL REPORT

## SB 6134

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As Reported by Senate Committee On:  
Law & Justice, June 17, 2015

**Title:** An act relating to exempting pretrial electronic alcohol monitoring programs from statutory limitations on pretrial supervision costs.

**Brief Description:** Exempting pretrial electronic alcohol monitoring programs from statutory limitations on pretrial supervision costs.

**Sponsors:** Senator Padden.

**Brief History:**

**Committee Activity:** Law & Justice: 6/17/15 [DPS].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 6134 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles and Roach.

**Staff:** Aldo Melchiori (786-7439)

**Background:** Costs in criminal cases are expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear. Expenses incurred for serving of warrants for failure to appear and jury fees may be included in costs.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Costs for preparing and serving a warrant for failure to appear may not exceed \$100. Costs for administering a deferred prosecution may not exceed \$250. Costs for administering a pretrial supervision may not exceed \$150.

Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than \$100 per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court.

The court cannot order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court must take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment.

In *State v. Hardtke*, the defendant was required to wear an alcohol monitoring bracelet while waiting for trial. He wore the bracelet as required, but objected to paying for the cost. Upon conviction, the trial court imposed the cost of \$3,972 for pretrial alcohol monitoring. The Court of Appeals affirmed, holding that Superior Court Criminal Rule 3.2 gave the trial court authority to require that Hardtke pay the cost because the court rule authorized the trial court to order pretrial electronic monitoring.

The Washington State Supreme Court disagreed. The court found that sentencing issues authorizing costs are substantive rather than procedural, so they are controlled by statute rather than court rule. While pretrial supervision is not statutorily defined, the definition of pretrial release program includes supervision which specifically includes work release, day monitoring, or electronic monitoring. By statute, costs assessed for administering pretrial supervision may not exceed \$150. The court held that the trial court exceeded its statutory authority when it imposed the \$3,972 cost for electronic monitoring.

**Summary of Bill (Recommended Substitute):** The \$150 limitation on costs for pretrial supervision does not apply to those for pretrial electronic alcohol monitoring, drug monitoring, or the 24/7 sobriety program. In cases involving driving under the influence or being in physical control of a motor vehicle while under the influence, if electronic monitoring or alcohol abstinence monitoring is ordered, the court must specify (1) who will provide the monitoring services, (2) the terms under which the monitoring is performed, and (3) upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring or abstinence monitoring.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Substitute):** The \$150 limitation does not apply to drug monitoring or the 24/7 program. In cases involving driving under the influence or being in physical control of a motor vehicle while under the influence, if electronic monitoring or alcohol abstinence monitoring is ordered, the court must specify (1) who will provide the monitoring services, (2) the terms

under which the monitoring is performed, and (3) upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring or abstinence monitoring.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is an important public safety issue. Counties do not have the funds to pay the monitoring costs for all appropriate defendants so judges will be reluctant to impose these release conditions unless there is an ability to get reimbursement from the defendant. The consequences of the Washington Supreme Court decision are being felt right now at the court level. Courts are changing their policies.

CON: The proposal would potentially obligate an acquitted defendant to pay for electronic alcohol monitoring. The alternative for some defendants may be incarceration. This will take money that the defendant could use for treatment.

OTHER: The Legislature should look at the broad spectrum of pretrial release conditions. The bill should be amended to include drug monitoring (addressed in the substitute bill).

**Persons Testifying:** PRO: Senator Padden, prime sponsor; Judge David Larson, Federal Way Municipal Court; Candice Bock, Association of Washington Cities; James McMahon, Washington Association of Sheriffs and Police Chiefs.

CON: Elizabeth Padula, Washington Association of Criminal Defense Lawyers, Washington Defenders Association.

OTHER: Judge David Larson, Federal Way Municipal Court; Judge Steve Warning, Superior Court Judges Association; Tony Sermonti, Department of Licensing.

**Persons Signed in to Testify But Not Testifying:** No one.